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ABSTRACT

Various petitions submitted to the Federal Communications Commission (FCC) for reconsideration and the FCC's response and discussion of these petitions are described in this memorandum. First, the questions raised by the petitioners are presented: "Did the Commission err in deciding not to impose a complete bar on communications common carriers engaging directly or indirectly in data processing services?"; assuming that the FCC was correct--"Were the safeguards imposed thereon to prevent anti-competitive, discriminatory, and cross-subsitization practices, too rigid or not rigid enough?"; and "Does the FCC have sufficient jurisdiction and statutory authority to take the action it has taken?". Next, the contentions of the petitioners are summarized and the FCC's position regarding each of the contentions is clarified and carefully discussed. The paper concludes with the statement that the aforementioned petitions for reconsideration are denied. (SH)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 72-288
75451

In the Matter of	)	
	)	
Regulatory and Policy Problems	)	
Presented by the Interdependence	)	DOCKET NO. 16979
of Computer and Communication	)	
Services and Facilities	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 1972 Released: March 30, 1972

By the Commission: Commissioners Burch, Chairman; and Robert E. Lee dissenting; Commissioner Bartley concurring in the result; Commissioners Reid and Wiley not participating.

1. We have before us Petitions for Reconsideration of our Final Decision and Order herein, released March 18, 1971, 28 FCC 2d 267, together with numerous pleadings in response thereto.

2. Petitions for Reconsideration were filed on various dates in April, 1971 by The Western Union Telegraph Company; International Telephone and Telegraph Company; Bunker Ramo Corporation; Continental Telephone Company; RCA Global Communications, Inc., First National Bank, San Angelo Texas; West Side National Bank, San Angelo, Texas; Texas State Bank, San Angelo, Texas; Wabash Data Services, Inc., Wabash, Indiana; Ligonier Telephone Company, Inc., Ligonier, Indiana; Florida Analytical Services, Winter Park, Florida; The First National Bank of Pennsylvania, Erie, Pennsylvania; Housing Service Center, Erie, Pennsylvania; Columbia Service Bureau, Inc., Columbia, Missouri; and J. K. Hoover, Inc., Professional Data Services, Cedar Rapids, Iowa.

3. We also have before us various oppositions and responses to the aforementioned Petitions for Reconsideration and other supplementary pleadings which were filed in April and May, 1971 by Bunker Ramo Corporation; Business Equipment Manufacturers' Association; Computer Time-Sharing Services Section (CTSS) of the Association of Data Processing Service Organizations, Inc. (ADAPSO); The Western Union Telegraph Company; International Telephone and Telegraph Company; Mankato Citizens Telephone Company, Mankato, Minnesota; the New Ulm Rural Telephone Company, New Ulm, Minnesota; the Blue Earth Valley Telephone Company, Blue Earth, Minnesota; the Eckles Telephone Company, Blue Earth, Minnesota; Computoservice, Inc., Mankato, Minnesota; and GTE Data Services, Inc. 1/

1/ Additional pleadings pending before us have also been considered herein to the extent relevant and material but will be disposed of by separate order in due course. They are Comsat's Petition for Clarification and Waiver, filed July 9, 1971; GTED's Request for Official Notice filed September 24, 1971 and oppositions thereto filed by Bunker Ramo Corporation and CTSS; and GT&E Corporation's Request for interpretation and contingent request for Reconsideration, filed October 19, 1971.

Questions Presented

4. The principal questions raised by the Petitions for Reconsideration may be stated as follows:

a. Did the Commission err in deciding not to impose a complete bar on communications common carriers engaging directly or indirectly in data processing services?

b. Assuming that the Commission was correct in permitting communications common carriers to engage in data processing services through separate entities, were the safeguards imposed thereon to prevent anti-competitive, discriminatory, and cross-subsidization practices, too rigid or not rigid enough?

c. Does the Commission have sufficient jurisdiction and statutory authority to take the action it has taken?

Contentions of Petitioners

5. In its petition the Bunker Ramo Corporation (Bunker Ramo) contends that we have not set forth specifically our rationale for permitting carriers entry into data processing services and that the enforcement of the safeguards we have imposed will generate an unforeseen regulatory burden on the Commission.

6. The Western Union Telegraph Company (WU) contends that the safeguards we have imposed are too rigid and unfair to the carriers, referring particularly to the requirement that a carrier may not purchase data processing services from an affiliate that also wants to sell to others, the restrictions on the use of a carrier's name or symbol in the data processing company's promotional activities or enterprises, and to the requirements that carriers submit information to the Commission concerning proposed hybrid data processing and hybrid communications offerings of itself and its affiliated companies.

7. International Telephone and Telegraph Company (ITT) contends that it will lose a valuable property right and goodwill attached thereto if it cannot use "ITT" in the name of both its communications subsidiary (i.e. ITT World Communications, Inc.) and its separate data processing division (ITT Data Services).

8. RCA Global Communications, Inc. (RCA) urges us to clarify or amend our decision so that (a) a carrier may directly,

(without using separate corporate entities) furnish data processing services, on a cost-sharing basis, to its carrier affiliates "and to other communications entities" in connection with inter-carrier arrangements and traffic, (b) a computer system or systems utilized by a carrier for communications purposes (e.g. message switching) may also be used for "in-house" purposes that are unrelated to furnishing of communications services, and (c) a carrier's parent corporation such as RCA Corporation, which employs computers for its own internal operations, may continue to make available to others, during off-peak hours, spare capacity from these computers.

9. Continental Telephone Corporation (Continental), is a holding company. It contends that all but 8 of the 86 operating telephone companies owned by Continental are "connecting carriers" as defined in Section 2(b)(2) of the Act and that these carriers are therefore not subject to the Commission's jurisdiction; that "local" data processing does not involve the use of communications facilities and is thus not subject to our jurisdiction; that "remote access" data processing by the use of communications facilities located physically within the same state is intrastate in nature and thus not subject to Commission jurisdiction under Section 2(b)(1) of the Act; and that "remote access" data processing by the use of communications facilities that cross state lines is performed, in the case of Continental companies, only through physical connection with unaffiliated carriers and thus such activity is not subject to the Commission's jurisdiction under Section 2(b)(2) of the Act. Furthermore, Continental contends that the Commission's attempt to regulate it, as the parent corporation, is improper since it is not an operating telephone company and the Act authorizes the Commission to regulate only common carriers. Moreover, Continental argues that the Commission does not have primary jurisdiction in antitrust matters and thus cannot adopt regulations for the purpose of preserving competition; that the record in this proceeding is devoid of any present or prospective abuses by telephone companies furnishing data processing services; and that any form of cross-subsidization or anti-competitive action by telephone companies would be prevented by state regulatory commissions in the states where the Continental companies operate.

10. Continental further contends that the rules we have adopted will seriously injure the Continental companies in that they will not be able to create a data processing affiliate that can provide service to both the operating telephone companies of Continental and to the non-telephone, non-communications subsidiaries of Continental, (e.g. the manufacturing affiliate); they will not be able to create a data processing affiliate that can

provide service both to the general public and to the affiliated operating telephone companies; they will not be able to obtain all economies of scale flowing from the sharing by affiliates of the same computer facilities, operating personnel, officers, and records; they will have to make reports and submit information to the Commission that will not be required of unregulated data processing services; they will not be able to lease their communications computers during off-peak hours; they will not be able to make full use of the valuable property right in the words or symbols contained in the names of the operating telephone companies; and they will not be able to promote the sales or activities of the data processing affiliate. Continental urges us to vacate and annul our decision in its entirety and adopt a case-by-case approach for the reason that "if, and when, any particular carrier subject to the Commission's jurisdiction engages in any wrongful activity, the Commission or one of its sister agencies can act under its existing authority."

11. The remaining petitions for reconsideration were submitted by banks, data service bureaus and other customers who presently use or propose to use the data processing services provided by GTE Data Services, Inc. (GTEDS). These petitioners contend that our decision and rules deprive them of the opportunity to obtain "local" data processing services that are essential to their businessses because GTEDS, a carrier-related data processor, would not be permitted to provide data processing services to them and its carrier affiliates. The contention is made that a shift by these petitioners to new or alternative data processing services would be costly, inefficient and a hardship on petitioners. Accordingly, they urge us to reconsider that part of our decision that prevents a carrier-related data processor from providing "local" data processing services to both the general public and carrier affiliates.

<u>Responses to Petitions for Reconsideration</u>

12. Following the receipt of the above-described petitions for reconsideration, oppositions were submitted by the Computer Time-Sharing Services Section of the Association of Data Processing Service Organizations, Inc. (ADAPSO), Business Equipment Manufacturers Association (BEMA), and Bunker Ramo.

13. ADAPSO, which filed no petition for reconsideration, opposes the petitions of ITT and Western Union and contends that the relief requested by these carriers would lead to deterioration in communications service, cross-subsidization, and unfair competitive practices. Bunker Ramo objects to the petitions of Western Union,

ITT and Continental and reiterates its earlier position that there should be total preclusion of carrier participation, directly or indirectly, in data processing services.

14. BEMA opposes the petitions of ITT and Western Union on the grounds that these petitions merely restate earlier arguments and contentions that were carefully considered and rejected by the Commission and that there is therefore no basis for reconsideration, citing our decision in WWIZ, Inc., 3 RR 316 (1964), among others. BEMA also contends that Western Union should not be heard to complain that carrier-related data processors would be required to submit certain reports to the Commission that would not be required of other data processors. BEMA asserts that Western Union is the holder of a monopoly franchise which gives Western Union and other carriers a competitive leverage not enjoyed by non-carrier affiliated data processing companies and should expect to be required to submit such reports.

15. In addition to the aforementioned oppositions addressed specifically to the petitions for reconsideration, a number of other pleadings were submitted. ITT filed a reply to the opposition of ADAPSO and repeated ITT's contention that it should be permitted to continue to use "ITT" in the names of both its communications and data companies. Western Union filed a general response to earlier pleadings which it does not specifically identify. In its further pleading, Western Union re-states its earlier arguments that the safeguards we imposed for carriers and carrier-related data processors are too rigid. In addition, Western Union contends, for the first time, that the Commission lacks power to impose any restraints whatsoever on the conduct of a carrier's non-communications business unless there is a showing of actual or potential abuse; that such a showing is lacking in the record of this proceeding; and that the Commission lacks power to regulate transactions between carriers and their non-carrier affiliates. The company requests oral argument before the Commission on the jurisdictional contentions made by it. Bunker Ramo also filed another pleading by way of reply to the aforementioned general response of Western Union in which Bunker Ramo makes certain contentions about a pending formal complaint that it has filed against Western Union alleging, *inter alia*, certain discriminatory actions by the carrier and requesting monetary damages. This complaint is currently in hearing status in Docket No. 19206.

16. GTEDS filed a statement in support of the petitions for reconsideration that were filed by banks and others who are currently using or propose to use the "local" data processing services of GTEDS. Although the pleading does not identify the intercorporate relationship of GTEDS to telephone carriers, we

take official notice that it is a data processing affiliate of the General Telephone System, the largest non-Bell telephone system in the United States. GTEDS asserts that its data centers are generally located where no other reasonable source of data processing services is available to the petitioners; that such petitioners will be faced with the decision of returning to manual methods, using in-house systems, or converting their operations and rewriting programs to fit the equipment of another supplier, if one is available; that some service bureaus leasing block time from GTEDS may be forced out of business; that the allocation of costs of computers or computer system between communications usage, on the one hand, and "local" data processing usage, on the other hand, would be fairly simple and the potential for cross-subsidization and other improprieties would be negligible; and that GTEDS or its affiliate carriers ought to be able to provide data processing services to unaffiliated telephone companies. GTEDS filed no petition for reconsideration. Nevertheless, it urges us to modify our decision to at least allow carriers or carrier-related affiliates to provide "local" data processing to both the public and carrier affiliates, and to allow carriers or carrier-related affiliates to furnish all kinds of data processing services to both non-affiliated telephone companies and carrier affiliates.

17. The Mankato Citizens Telephone Company, New Ulm Rural Telephone Company, Blue Earth Valley Telephone Company, Eckles Telephone Company and Computoservice, Inc. filed a joint pleading in which they assert that they have formed a data processing service company, named Computoservice, Inc. (CSI), which provides data processing service to small telephone companies and to other businesses as well. These petitioners specifically oppose the petition for reconsideration filed by Bunker Ramo. Although this joint petition does not object to any part of our decision or rules, it is assumed that the companies object to our decision to the extent that it would bar their carrier-related data processing affiliate (Computoservice, Inc.) from providing data processing services to both the affiliated carriers and the public.

Discussion

18. We discuss first the contention of Bunker Ramo that our decision does not set forth our rationale for concluding that communications common carriers should be permitted to engage in data processing.

19. We believe that Bunker Ramo's objection stems primarily from its apparent failure to recognize that our earlier Tentative Decision, with modifications, was adopted as a part of our Final

Decision and that the two documents must be read together. In our Tentative Decision, we started off with the proposition that "In this country we rely upon the 'free enterprise' system with the maximum possible latitude for individual initiative to enter into any given enterprise and compete for available business" (Paragraph 19); that "the offering of data processing services is essentially competitive" (Paragraph 20); and that "the market for these services will continue to burgeon and flourish best in the existing competitive environment" (Paragraph 22). We further found that, except with respect to the Bell System, there is no provision of law that prohibits or bars a carrier from engaging in any non-regulated service and that many carriers do, in fact, provide such services (Paragraphs 24, 27). We alluded to the SRI study that set forth the possible benefits from permitting carriers to enter into data processing (Paragraph 31) and we concluded that "the additional competitive services provided by carrier participation in data processing can and should, with the specific safeguards, promote innovation, efficiency, economy, and diversity with resulting new and improved services at lower prices to the users of data processing." (Paragraph 33)

20. In Paragraph 11 of our Final Decision, we specifically reaffirmed our Tentative Decision in the foregoing respects and concluded that there was no basis for us to adopt an outright prohibition against carriers providing data processing services directly or indirectly. We stated that it would be an extreme sanction that would be contrary to our established policy of generally permitting carriers to engage in non-regulated business, subject to safeguard; and that we expected that the "competition afforded by carriers in the provision of computer services could and would provide benefits in such matters as new and improved services and lower prices." Finally, we concluded that "we cannot find the necessary social, economic or policy considerations which would require or even justify an outright prohibition against the furnishing of data processing services by common carriers."

21. Bunker Ramo argues further that total preclusion of carriers from data processing is the best practical alternative for the Commission to follow to achieve the objective of preventing cross-subsidization, discrimination, and anticompetitive practices by carriers. The reasons given are that, in order to make the safeguards work, the Commission must maintain a staff and related resources adequate to monitor the activities of the carriers and their data affiliates to assure that they abide by the safeguard rules and that they do not in fact engage in such improper practices; that the Commission does not now have and isn't likely to have the resources necessary to do the job adequately; and that total preclusion of the carriers from data processing would remove the necessity for any safeguard rules or for the enforcement thereof.

Thus, for example, it is contended that a carrier could deny service to such competitors or extend other forms of preferential treatment to the carrier's affiliate and, although such actions would be unlawful, the remedies under the Act for such unlawful actions are allegedly inadequate. We gave careful consideration to this argument in our Final Decision, and stated, inter alia, that we expect the carriers to live up to the spirit as well as the letter of their obligations and that we would take prompt action should we find our confidence in this regard misplaced (Paragraphs 21-22). Contrary to Bunker Ramo's assertion, we are convinced that the various provisions in the Act for forfeitures, sanctions, penalties, and other remedies are quite adequate to assure that the carriers will conform to the requirements of the Act in providing communications service to the public. Accordingly, we reject the contentions that the safeguards we are imposing should be made more rigid. Our conclusion is that these safeguards are adequate and that they will afford reasonable assurance for the immediately foreseeable future that the provision of data processing services by carriers will neither adversely affect the statutory obligation of such carriers to provide adequate communications service under terms and conditions that are just and reasonable and free of undue discrimination or preference, nor impair effective competition in the sale of data processing services. Moreover, we make it clear in our Final Decision that we shall be prepared to make any changes in our rules and take such action as may be necessary or desirable if we find that the safeguards are not achieving the aforesaid public interest objectives.

22. In view of the foregoing, it appears to us that Bunker Ramo's argument, in substance and effect, is that it should be sheltered by the Commission from any competition whatsoever from carrier-related data processing rivals. We believe that Bunker Ramo is urging an untenable position that would be clearly anti-competitive and contrary to the public interest, particularly in view of the numerous safeguards we are imposing to protect companies like Bunker Ramo from any substantial danger of improper competitive actions by common carriers.

23. As heretofore stated, parties other than Bunker Ramo that submitted petitions for reconsideration, contend that the specific safeguards we have imposed, are, in one or more respects, too stringent. These parties are Western Union, ITT, RCA, Continental, and the aforementioned customers of GTEDS. We have summarized all of these various contentions in preceding Paragraphs 6-10 hereof. Numerous comments were also filed in opposition to or in support of these contentions and these are also summarized in preceding

Paragraphs 16-17 hereof. Most of these objections and comments thereon are addressed to the merits of the specific safeguards that we proposed in our Tentative Decision, and as to which all interested parties had ample opportunity to submit comments thereon and on which oral argument was held en banc before the Commission. Thus, insofar as the petitions herein are directed to the safeguards proposed in our Tentative Decision, we are of the view that they are repetitious and that the parties have offered nothing new in the way of factual matter or other consideration to warrant additional or further discussion by the Commission. We carefully considered all of these contentions and gave our reasons for adopting the aforementioned safeguards in our Tentative and Final Decisions. Accordingly, reconsideration thereof will be denied. WWIZ, Inc. 3 RR 2d 316 (1964) However, there are certain contentions made by the petitions for reconsideration that warrant further discussion by us and these relate to the actions we took in our Final Decision to extend the safeguards we originally proposed in our Tentative Decision.

24. In our Tentative Decision we proposed to prohibit a carrier from engaging in the sale or promotion of data processing activities of its data processing affiliate. (Paragraph 36; Section 64.702 (b)(3). We considered this to be an essential ingredient of our regulatory scheme of "maximum separation of activities which are subject to regulation from non-regulated activities involving data processing." (Paragraph 35) In our Final Decision we agreed with the reasoning of several parties that this particular restriction should be made more effective by making it clear that it would be impermissible for a data affiliate to use in its name any of the carrier's name or symbol (see Paragraph 18). In their petitions for reconsideration, Western Union, ITT and Continental object to this particular expansion of our earlier proposed rule. However, none of these parties raise any objection to the basic requirement, proposed in our Tentative Decision, that a carrier shall not engage in the sale or promotion of the services of its data affiliate. We find this to be somewhat inconsistent. We think it clear that the use of a carrier's name or symbol in the name of a data affiliate could negate the objectives of our basic rule and would result in the carrier indirectly promoting the services of its data affiliate. The arguments made by the carriers bear this out because they stress the great value and goodwill in the carrier's name or symbol which will be lost to and not available to the data affiliate under our rule. We are of the opinion that we should adhere to our expanded requirement for the reasons stated above and in our Final Decision (see Paragraph 18). We shall therefore reject the requests that we reconsider and delete this requirement.

25. As we made clear in our Tentative Decision, the objectives of our "maximum separation" safeguard rules are to assure that

we, as well as state regulatory agencies, could discharge our regulatory responsibilities with respect to maintaining adequate and efficient communications services at reasonable and non-discriminatory rates and practices, and that foreseeable anti-competitive carrier practices could be prevented without the necessity of taking corrective measures that might otherwise be called for (Paragraphs 35-37). Accordingly, we gave careful consideration to the contentions of several parties commenting on our Tentative Decision that we could not achieve these objectives unless we made it clear that carrier-related data affiliates should not provide data processing services both to their related carriers and to others. We agreed with these contentions in our Final Decision as a logical and necessary extension of our "maximum separation" safeguards and adopted Rule 64.702(c)(5) which would prohibit such transactions (Paragraphs 19 and 20).

26. Western Union, Continental and GTEDS' customers request our reconsideration of the aforementioned safeguard rule prohibiting carriers from obtaining data processing services from data affiliates and providing service to others. ITT and RCA raise no objection thereto. Western Union asserts that our action in this regard imposes on a carrier's data affiliate a competitively inferior status; that unregulated companies and regulated utilities other than communications carriers, may purchase at will from their data affiliates; and that a larger market is made available to unrelated data processing companies to the unfair competitive disadvantage of carrier-related data companies. Continental states that the rule would not affect their present operation but that their operating telephone companies should have an option in the future, if desirable, to purchase data processing from their affiliated data processing company (Continental Data Services Corporation) which sells data processing service to the public. At present, the Continental telephone companies obtain all of their "in house" data processing services from another data processing affiliate, (Continental Telephone Service Corporation) which does not sell data processing service to the public. Continental contends that there is no reason why its carriers should not be able, if they wish, to buy data processing services from the same affiliate that also sells to the public. It makes essentially the same argument as Western Union and relies upon the dissenting statement of the three Commissioners. The customers of GTEDS (supported by a subsequent pleading filed by GTEDS) assert that they will not be able to obtain "local" data processing service from GTEDS "so long as GTEDS continues to provide data processing services to its telephone affiliate." They state that it will be difficult and costly for them to shift to other data processing services. Thus, both GTEDS and their customers object to the extension of our safeguard rules that prevent a carrier from purchasing data processing services from a data affiliate that also sells to others. Finally, as heretofore stated, the four non-Bell System

telephone companies (Mankato Citizens Telephone Company et al) who have formed Computoservice, Inc. indicate by their pleading herein that they wish to continue to be able, through their data affiliate, to provide data processing service to both the owner companies and to the public.

27. All of the aforementioned contentions advanced by Western Union, Continental, GTEDS, customers of GTEDS, and Mankato, et al in opposition to Rule 64.702(5) were carefully considered by the Commission before it took action. The essence of all of these arguments was clearly articulated in the opinion of the three Commissioners dissenting from our Final Decision. Nothing new has been added by petitioners to warrant any change in our conclusion that adoption of this expanded requirement is a natural, logical and necessary amplification of our rules if we are effectively to implement "maximum separation." Moreover, the pleadings that have been submitted by GTEDS and its customers lend added support to the correctness of our action in adopting Section 64.702(5) for reasons which we shall state.

28. One of our concerns in adopting our "maximum separation" is that there be no adverse effect of carrier entry on competition in the data processing market. Both GTEDS and its customers contend that currently there are no other "reasonable" alternative data processing sources for customers of GTEDS to turn to if GTEDS is required to comply with our rule by limiting its service exclusively to the operating telephone companies of the General Telephone System. If these statements are correct, serious and substantial questions are raised as to whether the General Telephone System may not have already achieved a dominant position in the data processing markets or sub-markets now being served by GTEDS with adverse consequences on the competitiveness of such markets.

29. As heretofore stated the General Telephone System is the largest telephone system in the United States, outside of the Bell System. The parent corporation, General Telephone & Electronics Corporation (GTE) is a holding company which owns and controls a number of telephone, manufacturing, research, directory and service companies with operations in 39 states and 18 foreign countries. GTEDS is a wholly owned subsidiary of GTE. At the end of 1970, GTE had total assets of \$7.7 billion, including net property, plant and equipment of \$6.1 billion. Gross telephone plant (before deduction of depreciation reserve of \$1.2 billion) amounted to \$7.0 billion. Gross investment in manufacturing facilities totalled \$702 million before accumulated depreciation of \$337 million. The telephone operations of GTE produced revenues in 1970 totalling \$1.7 billion and net income of \$166 million. Manufacturing operations reported sales of \$1.7 billion and net income of \$70 million. Consolidated revenues and sales of GTE amounted to \$3.4 billion with consolidated

income of $205 million. In the United States, according to "Forbes" (May 15, 1971), GTE ranked 23rd in terms of assets at the end of 1970, for the year 1970, 26th in terms of sales and revenues and 18th in terms of net income.

30. The nation-wide computer system of GTEDS consists of large-scale computers located at approximately 13 regional centers thoughout the United States. Typical of these installations is the one at San Angelo, Texas. In its pleading, GTEDS describes the situation at San Angelo as follows:

> "Specifically, the GTEDS data center in San Angelo, Texas, is the only sizeable EDP operation in a 100-mile radius. There are only two (2) service bureaus in that area and they operate with a 1401 and a small scale 360/20 computer; and one of the banks in San Angelo has a small Burroughs 350. GTEDS presently has IBM 360/50 and 360/40 computers at the San Angelo location. These computers are much larger than the three above mentioned and therefore have the capability of running larger, more sophisticated and more complicated programs. Most of the applications run by GTEDS on these computers could not be run on the smaller computers above mentioned. The market potential for EDP services in the San Angelo area indicates that very few if any service bureaus would invest the capital required to acquire and operate this equipment which is necessary to service the needs of the community."

31. From the above-quoted statements by GTEDS it would appear reasonable to conclude that the principal factor that militates against the existence of comparable alternative competitive sources in the San Angelo area is the fact that GTEDS, which was formed for the purpose of serving the operating telephone companies of the General Telephone System, now provides service to the public thereby making it difficult if not impossible for alternative sources to exist. We note from GTEDS' statement that there might indeed be a "few" service bureaus that would be willing to make the investment and supply the data processing services needed by the public if GTEDS' services were not offered to the public. Accordingly, rather than supporting arguments against our rule, we believe that the information submitted by GTEDS and its customers does just the opposite and strongly supports our action in adopting Rule 64.702(5). If in fact, GTEDS or its parent company has serious concerns about the availability of computer services to the customers now served by GTEDS, there is nothing in our decision to prevent the parent company from providing such services through an affiliate which does not serve the telephone carriers of the General Telephone System.

32. The responsive pleading filed jointly by the four non-Bell System telephone companies owning Computoservice, Inc. (CSI), is directed primarily to urging us to deny Bunker Ramo's petition for reconsideration. This we have done. However, the pleading also expresses concern over the effect of our decision on the future operations of CSI. It appears that CSI would not be able, under our rules, to continue to provide service to both the public and to all of the four telephone company owners. This is because at least one of the owners (the Mankato Company) has revenues that exceed $1 million a year and thus would not be exempt under Section 65.702(b). To the extent that the other owners of CSI are exempt under 65.702(b), they will be permitted to purchase data processing service from CSI even though CSI also sells to others. Thus, the only change in CSI's operation that would appear required under our rules, assuming CSI elects to serve others, would be for CSI to discontinue furnishing data processing service to Mankato and any other owner that is not exempt. CSI alternatively could devote all of its operations to its owners. We do not believe that the changes that may be required in CSI's operations constitute sufficient grounds to warrant our reconsideration of our decision in this respect.

32a. As indicated above, we are of the view that, if data processing affiliates serve both their related communications companies and non-related companies, they would be in a peculiarly advantageous structural position to absorb the markets now served by other data processing companies. With an assured market furnished by a carrier affiliate (sales of data processing services would be expenses to the communications carrier and passed on to the communications user), it is reasonable to expect that the data processing affiliate would gain a competitive advantage over its non-affiliated rivals and the risk would be that the data processing market would gravitate to communications data processing affiliates and eventually be "captured" by them. This is what has already happened in some degree in the areas served by GTEDS and we are concerned that this tendency would increase as computers and communications became more and more interdependent. Accordingly, we reject the contentions of petitioners in this respect.

33. Western Union objects to the requirement that carriers or carrier-related data companies must file with us reports of any proposed "hybrid" service 90 days before engaging therein. (Section 64.702(e) and (b)) These reports must include a complete description of the proposed service. One of the purposes of these rules is to assist the Commission in developing on an ad hoc basis the guidelines that will be helpful to industry and interested parties in determining the specific factual situations under which hybrid services would fall into either the category of hybrid communications (regulated) or hybrid data services (unregulated). (See Paragraphs 33-36 of Final Decision.) Western Union contends that competitors of carriers will be able to see these reports well in advance of the inauguration of the service and learn of the business plans and purposes of the carriers whereas non-carriers will not be required to make similar disclosures. Western Union's objection to public disclosure of these reports at the time they are submitted is well taken. However, our existing rules provide ample means whereby any needed

protection to the carriers and carrier-related companies may be provided in any case where a showing can be made that premature public disclosure of such reports would be inappropriate. (See Section 0.459) Accordingly, we will give consideration to any requests made, at the time any of these reports are submitted, for confidential treatment and will decide such requests on their individual merits. However, it should be understood that our policy will be to make public all of these reports (and any Commission ruling thereon) within a reasonable period after they are submitted so that industry may have the benefit of the guidelines developed from the regulatory treatment accorded to the specific factual situations covered in these reports. For the foregoing reasons, we shall reject Western Union's request that we reconsider and amend Rules 64.702(e) and (f).

34. RCA's petition for reconsideration asks modification of our rules to permit a carrier itself to provide data processing services on a cost-sharing basis directly to its common carrier affiliates. No change is required for this purpose as the rules permit this to be done. However, RCA goes further and asks that a carrier itself be permitted to provide such services directly to both its common carrier affiliates "and to other communications entities in connection with inter-carrier arrangements and traffic." RCA does not state what companies are intended in the somewhat broad term "other communications entities" nor does it otherwise provide any factual support for this proposal. We shall therefore reject it as an unjustified deviation from our general rule that a carrier not otherwise exempt may provide data processing services to others only through separate corporations in accordance with our "maximum separation" principle.

35. RCA also asks that we make it clear that a carrier may use its own "in-house" computer or computer systems not only for purposes incidental to the provision of public communication services but for any purpose incidental to any permissible non-regulated undertaking of the carrier. We think it clear that our rules do not prohibit such usage. Carriers are permitted to engage in certain non-regulated activities (e.g. Western Union's flower and time services). Paragraph 20 of our Final Decision states that a carrier's in-house computer system may be used to accommodate a carrier's particular needs. The language in Paragraph 15 of our Final Decision to which RCA refers, was not intended to limit the use of a carrier's "in-house" computers to the regulated activities of the carrier. Similarly our rules would permit RCA's parent corporation, for example, to provide off-peak capacity from its in-house computers to persons other than an affiliated carrier. RCA's requests for clarification are granted to the extent indicated above.

36. Finally, we turn to the jurisdictional arguments made by Continental and Western Union. We summarize the contentions of these parties in preceding Paragraphs 9 and 15. None of the other parties filing pleadings with us have questioned our power to take the action we have taken herein.

37. In our Tentative and Final Decisions we dealt at some length with the various jurisdictional questions that had been raised by the parties. (See e.g. Tentative Decision Paragraphs 14; 17-19; 27a-29; Final Decision Paragraphs 4-9; 23; 28; 30.) Neither Continental nor Western Union present any new factual or legal arguments that have not been considered by us and discussed in our Tentative and Final Decision. Ordinarily we would be disposed to engage in no further elaboration with respect thereto. However, some additional comments should be made with respect to certain aspects of these contentions.

38. Continental, for example, continues to rely heavily on its allegation that all but 8 of its 86 operating telephone companies are classified as Section 2(b)(2) "connecting carriers" and that, for this alleged reason, we have no jurisdiction over such carriers. We discussed this argument in our Final Decision (See Paragraph 23 of Final Decision), but Continental continues to dispute our holding that we have jurisdiction over any carrier that is in fact a Section 2(b)(2) carrier. However, Continental, in quoting 2(b)(2) of the Act in its petition omits language therein that Section 2(b)(2) companies are fully subject without exemption to Section 301 of the Act thereby ignoring the requirement that any 2(b)(2) carrier that is licensed by us to operate radio facilities may do so only if it meets the public interest requirements imposed by the Act and the rules and regulations which we promulgate in the public interest. Continental also omits that portion of Section 2(b)(2) that states that "connecting carriers" are subject generally to the requirements of Sections 201-205 of the Act including inter alia that these carriers shall not engage in any practice for and in connection with its interstate communications services that is unjust or unreasonable or unduly discriminatory or preferential. Continental also overlooks the statutory provisions that make Section 2(b)(2) carriers subject to our direct antitrust jurisdiction, insofar as Sections 2, 3 and 7 of the Clayton Act are concerned (47 U.S.C. 602(d)) and that only this Commission can grant antitrust immunity to 2(b)(2) and other carriers involved in mergers and acquisitions. (47 U.S.C. 221(a))

39. Western Union's arguments on jurisdiction are not entirely clear. First, it states that the Commission does indeed have broad powers. However, it states that "what is contended by the carriers is that the exercise of such powers to prohibit carrier procurement of affiliate-supplied data processing and the shared use of common corporate names is an abuse of discretion." It appears to argue that we abused our discretion by not utilizing other measures open to us. We disagree. By the preceding paragraphs hereof and in our prior decisions we have set forth our carefully considered reasons for our action in these regards in lieu of the alternative courses of action recommended by Western Union. The company argues additionally that we have no statutory authority to impose the restrictions we have imposed. We also disagree with this. At the risk of repetition, we reassert that our statutory authority is broad and imposes heavy responsibilities upon us, inter alia, to insure (a) that common carriers, presently and in the future, provide adequate communications service, at just and reasonable and non-discriminatory rates and that they employ practices, and classifications and regulations that are just, reasonable and non-discriminatory, Sections 47 U.S.C., 151, 201-202, 211, 213-214-215, 218-219-220; (b) that they operate all radio facilities in accordance with the public interest requirements of the Act, and the rules and regulations thereunder, Section 47 U.S.C. 301 et seq.; and (c) that they comply with Sections 2, 3 and 7 of the Clayton Act, 47 U.S.C. 602(d). Further, we have the statutory duty to consider and evaluate all relevant factors with respect to the foregoing, including, but not limited thereto, national policies relating to competition, monopolies or combinations, contracts or agreement in restraint of trade 47 U.S.C. 221(a), 313, 602(d); and Sections 2, 3 and 7 of the Clayton Act.

40. For the reasons stated above and in our decisions we shall deny the petitions for reconsideration and shall make no modifications at this time in our rules. In this connection we affirm the interpretation of our rules by the Chief, Common Carrier Bureau, in a letter to GTE dated March 23, 1971 from the Chief, Common Carrier Bureau, copy of which is appended hereto.

Conclusion

41. Accordingly, IT IS ORDERED, That the aforementioned petitions for reconsideration ARE DENIED and our Final Decision IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Ben F. Waple
Secretary

Attachment

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

March 23, 1971

IN REPLY REFER TO:

9310

Mr. Theodore F. Brophy
Executive Vice-President
GT&E Service Corporation
730 Third Avenue
New York, New York 10017

Re: <u>Final Decision and Order in the Computer/Communications</u> Inquiry (Docket No. 16979), released March 18, 1970 (FCC 71-255)

Dear Mr. Brophy:

This is to confirm the advice given to you by telephone last Friday in response to your inquiry as to whether the Commission's decision in the Computer Inquiry of March 18, 1971 (Docket No. 16979) permits the operating telephone companies of the General System to obtain data processing services from an affiliated company that provides such services only to one or more such operating telephone companies and to no other entity. The decision was not intended to foreclose such an arrangement.

Paragraph 20 of the Decision states that a communications common carrier with data processing needs has available to it several options: "in house" data processing facilities; arrangements with non-affiliated service firms for the furnishing of data processing service; and permissible shared-cost arrangements with Bell System Companies respecting intercarrier traffic (See also paragraph 40). Section 64.702(c)(5) of the new rules provides, in pertinent part, that no carrier, not exempted by the "$1,000,000 provision" of Section 64.702(b), may obtain data processing services from "a separate corporate entity that furnishes data processing <u>service to others</u>" (our underscoring).

Your inquiry involves the interpretation to be accorded the aforementioned terms "separate corporate entity" and "service to others." You ask, in effect, whether a communications common carrier may obtain data processing services from an affiliated "separate corporate entity" which furnishes service not only to such carrier (e.g. General of Illinois) but also to other carriers affiliated therewith (e.g. General of Florida).

We construe the language, "service to others", to refer to service to entities other than the communications common carriers with which the

separate corporation is affiliated and that the kind of service you describe should be permitted. Thus, the carriers in the General System, for example, would thereby obtain "in house" data processing services through the vehicle of an affiliate which does not also sell data processing services to entities other than the General System carriers. Accordingly, we interpret 64.702(c)(5) of the rules as permitting a carrier to obtain data processing service from a separate corporation that is exclusively devoted to providing such service to such carrier or other carriers affiliated therewith. We recognize that the rules may need to be clarified in this respect and we are giving consideration to doing so in the near future.

Sincerely yours,

Bernard Strassburg

Bernard Strassburg
Chief, Common Carrier Bureau